

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ELECTRIC POWER SUPPLY ASS'N, *et al.*,

Plaintiffs,

V.

ANTHONY M. STAR, in his official capacity
as Director of the Illinois Power Agency, *et al.*,

Defendants.

Case No. 17-cv-01164

Judge Manish Shah

Magistrate Judge Susan Cox

MOTION TO DISMISS

The defendants, Anthony Star, the director of the Illinois Power Agency, Brien Sheahan, John R. Rosales, Sadzi Martha Oliva, Miguel Del Valle, and Sherina Maye Edwards, the Commissioners of the Illinois Commerce Commission, by their attorney, Lisa Madigan, Attorney General of Illinois, move the Court, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, to dismiss the complaint for failure to state a claim upon which relief can be granted.

In support of this motion, defendants state as follows:

1. Plaintiffs, generators of electric power, challenge the constitutionality of recent amendments to the Illinois Power Agency Act, 20 ILCS 3855, in Public Act 099-0906, effective June 1, 2017.

2. Plaintiffs allege that the amendments, which create a program for the procurement of Zero Emission Credits, are preempted by federal law and are contrary to the dormant Commerce Clause.

3. For the reasons stated in more detail in the attached memorandum of law, defendants submit that these claims should be dismissed as a matter of law.

4. Accordingly, defendants request that their motion to dismiss be granted.

Respectfully submitted,

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